IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 438 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINCHANDRA BECHARDAS PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 438 of 2001

MR JM PANCHAL with Mr K J Panchal for Petitioner No. 1

Mr B D Desai, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 06/02/2002

JUDGEMENT

The present revision application has been filed by the petitioner above named under section 397 read with

section 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code') challenging the judgment and order dated 25th day of September, 2001 recorded by the learned Addl.City Sessions Judge, Court No.11 of the City Sessions Court, Ahmedabad in Criminal Appeal No.45/99. The learned Judge allowed the said appeal partly. The said court set aside the order of conviction and sentence of the present petitioner for the offences punishable under section 465 and 468 read with section 114 of IPC, extending benefit of doubt to the petitioner and acquitted him of the said offence. However, the learned Appellate Judge confirmed the conviction of the petitioner for offence punishable under section 471 of IPC and directed him to suffer simple imprisonment for two years and at the same time, the fine imposed by the trial court was confirmed.

2. The said appeal was filed by the present petitioner against the judgment and conviction order dated 3.4.1999 recorded by the learned Metropolitan Magistrate, Court No.18, Ahmedabad City in criminal case no.499/96 for the offences punishable under sections 465 and 468 read with section 114 of IPC and sentencing him to suffer S.I. for two years. He was further directed to pay fine of Rs.2500/-, in default of payment of fine, he was further directed to undergo S.I. for three months. The learned Magistrate also convicted the petitioner for an offence punishable under section 471 of IPC and directed the petitioner to suffer S.I. for three years. The petitioner was also directed to pay fine of Rs.5000/-. In default of payment of fine, he was directed to suffer S.I. for three months. The learned Magistrate also directed that substantive sentence be run concurrently.

3. Feeling aggrieved by the aforesaid judgment and conviction order of the learned Addl.Sessions Judge in criminal appeal no.45/99, the petitioner has preferred this revision application before this Court. It was mainly contended here that the two courts below have committed illegality in holding that the present petitioner has used or produced a forged document with a view to obtain/secure a job in service. That there was no material to decide the factual aspect. That therefore, the judgment and conviction order are illegal and erroneous and deserve to be set aside. It is, therefore, prayed that the present revision be allowed and the judgment and orders of the two courts below be quashed and set aside.

4. On receipt of the revision application, Rule was

issued and Mr B D Desai, learned APP appeared for the State. I have heard the arguments advanced by learned Advocates Mr J M Panchal and Mr B D Desai and have perused the papers.

5. The case of the prosecution before the trial court was that in 1995 some complaints were received and therefore, instructions were issued to verify the certificates and mark sheets of the teachers serving in the Schools in Professional Courses. Therefore, due inquiry was made and it was noticed that the mark sheet in the case of the present petitioner was fake and false and, therefore, FIR was filed and after investigation, charge sheet was filed against the petitioner as well as against one Gitaben Zala. It was alleged that the present petitioner had forged the said document and had used the same for the purpose of getting a secured job. The allegation against the co - accused, i.e. Gitaben, was that though the said accused was in the management, she did not properly verify the records and abetted the commission of the said offence said to have committed by the present petitioner. At the trial, learned Magistrate recorded evidence and found the petitioner guilty as said above. However, the co accused Gitaben came to be acquitted by the learned Magistrate since no evidence was found against her according to the decision of the learned Magistrate. It seems no appeal has been filed against the said acquittal order of co - accused Gitaben. At the same time, the learned Magistrate found the present petitioner guilty and he was convicted accordingly. The learned Addl.Sessions Judge partly allowed the appeal and reduced the sentence as aforesaid.

6. The learned Advocate for the petitioner has argued at great length that there was absolutely no evidence on record to show that the forged mark sheet was actually produced by the present petitioner before school authorities or before any other authority. That therefore, there is no evidence on record to show that the forged document was used or produced by the present petitioner. That in absence of such an evidence, the present petitioner could not have been held guilty, for the offence punishable under section 471 of IPC.

7. In fact, learned advocate for the petitioner has taken me through the judgment of the learned Addl.City Sessions Judge. In para 11 of her judgment, she has analysed the provisions made in section 471 of IPC at page 11. The analysis has been made as follows:

"(b) The prosecution must prove while proving

ingredients of section 471 of IPC that ;

(i) the document was forged

(ii) such a document was used by the accused

(iii) and that he used it as a genuine one and

(iv) that he knew that it was a forged one and also that

(v) he used it dishonestly and fraudulently".

The trial court as well as the Sessions Court both have found that Exh.10 was a forged document. The reason for coming to that conclusion is that the original mark sheet was also produced on record. In that, the present petitioner had earned only 4 marks out of 100 marks as per Exh.11. On the other hand, the document Exh.10 which is found to be forged, by the two courts below, shows that the petitioner had obtained 60 marks out of 100 marks. It was GCC examination and, therefore by producing original mark sheet at Exh.11, it was proved on record that the mark sheet produced at exh.10 was a forged one. The petitioner had appeared at the said examination and, therefore, there is no dispute even before me that the petitioner had obtained 4 marks out of 100 marks at the examination given by him as per the mark sheet exh. 11. It is nobody's case that the petitioner had, in fact, obtained 60 out of 100 marks in terms of mark sheet exh.10. Therefore, mark sheet Exh.10 is undoubtedly a forged document and there was no serious dispute about the said position. The main thing is as to whether there was evidence to show that this document exh.10 which is found to be a forged one, was used by the present petitioner.

8. Now, it is a matter of record that it is nobody's case that the petitioner had submitted a genuine mark sheet Exh.11 showing that he had obtained 4 marks out of 100 at the GCC examination. It is absolutely doubtless that the petitioner would not have been found to be eligible for appearing at the test for the recruitment in question if he had produced the said mark sheet Exh.11 showing that he had obtained 4 marks out of 100 at the GCC examination. It is undisputed that the petitioner would not have been eligible if he had shown that he had not passed the said examination. It is nobody's case that even xerox copy of the mark sheet Exh.11 was produced by him at any point of time.

9. Another aspect of the case is that the clearance

of the said GCC examination which was an essential element and requirement for getting the job in question. Therefore, a GCC certificate or mark sheet showing clearance of the said examination was sina quo non for getting the said job. The petitioner has secured the said job, he was appointed on the said position and he was found working on the said position after being appointed there. This would clearly indicate that the petitioner did produce the said mark sheet Exh.10. It has to be gathered here that he would not have been eligible had he not produced the said mark sheet Exh.10. He would not have been even invited for the interview, had he not produced the said document Exh.10. It is also to be noted that he has also not produced the genuine mark sheet or xerox copy of the same- Exh.11 at any point of time. It is nobody's case that the petitioner had produced some marksheets, other than the one at Exh.10. Without submitting the mark sheet, the petitioner would not have been called for even the interview. He would not have been selected and he would not have been appointed on the post in question. This clearly indicates that the petitioner did produce the said document at the relevant point of time.

10. The argument advanced by learned Advocate Mr J M Panchal is that there is no material to show that the said fake or forged mark sheet Exh.10 was produced by the petitioner before the school management. It is also argued that the trial court has not properly dealt with this issue during the course of judgment. It seems from the evidence on records that there were certain complaints that some persons had produced fake, forged and got up certificates and/or mark sheets, with a view to get jobs. On receipt of such complaints, an enquiry was ordered by the Gujarat State Education Board. The Inquiry Officers checked and verified the records of Schools. During such verification, when concoction was noticed and when the said aspect had been reported to the higher authority, then the complaint was formally lodged by respondent no.2 on getting written instructions from the District Education Officer. The Court has also observed that the Investigating Agency collected the documents which have been placed on the record. The trustee of the school has also been charged with the offence of abetting the present petitioner. This shows that the said document was collected from the records of the employer of the petitioner. The trial court has also observed that there would be none else interested in forging the said document and in producing the same as genuine one before the employer. Now so far as the allegation that the present petitioner had forged the

document, the learned Addl.Sessions Judge found that there was no material to substantiate the said charge against the petitioner. However, so far as the production of fake document is concerned, the learned Sessions Judge found that there was sufficient material to show that the document Exh.10 was really produced by the present petitioner.

11. It is to be considered that the said document Exh.10 was actually recovered from the custody of the School authority and there is no serious dispute about the same even when the witnesses were examined. It is also required to be considered that as stated above, the petitioner was appointed and he actually served in the employment of the said employer. This also shows that he did produce the said document Exh.10. Otherwise he would not have been appointed in the said job. An attempt was made by the learned Advocate for the petitioner to argue that now-a-days even the management is interested in getting handsome money from the candidates and, therefore, the management may have produced forged mark sheet exh.10 on its own record for providing job to the petitioner after collecting handsome amount from him. It has to be considered here that the petitioner had never alleged, at any point of time, that he had parted with some amount in favour of the management. Even in his further statement recorded under section 313 of the said Code, he has not tendered the above explanation. Therefore, there is no material to show that the management may have provided a job in the said school to the petitioner after collecting the said amount from him and after itself producing Exh.10 on record. Therefore, this argument appears to have been raised without any material on record. Such an argument extraneous to the record cannot be entertained at this stage in a revision application. In fact the trial court as well as the Sessions Court both have considered the entire aspect of the case elaborately and had discussed the matter at length. By and large I agree with the findings and reasonings recorded by the trial court with respect to the production of forged mark sheet Exh.10 by the petitioner for getting a job in question. The trial court was not wrong and its approach was not illegal when it observed that the petitioner herein was the only person on the earth interested in producing such a forged mark sheet.

12. It is well known that this court exercising powers under section 397 read with section 401 of Indian Penal Code. Powers of this court in deciding revision application are very limited. This Court cannot and does

not undertake appellate jurisdiction. Since by and large, I agree with the reasonings and findings recorded by the trial court with respect to the production of the forged mark sheet Exh.10 before the employer by the petitioner, it is not necessary for this court to give elaborate findings and reasons for upholding the findings of fact recorded by the Courts below. It is well settled that reappreciation of evidence is ordinarily not permitted in criminal revision unless it is found that the conclusion arrived at are manifestly illegal and not in accordance with the evidence on record as laid down in the case of Ramaben Patel v. State, reported in 1992 (2) GLR 1530. A similar view was adopted in the case of Kantilal P Chavda v. Nanubhai K Chavda, reported in 1992 (2) GLR 1520. There it has been laid down that revisional powers can be exercised to do justice and not to do injustice even if the order sought to be revised is not in conformity with law. It is also laid down in the case of Lalitunnisa vs. Saiyad Asrafali, reported in 1986 GLH 254 that revisional powers could be exercised if -

(i) the order is illegal and perverse
(ii) the order is based on no evidence
(iii) the order is such that no reasonable person would arrive at such a conclusion.

Then it is further observed in Indravadan Chimanlal v. State, reported in 1993(2) GLR 1351 that when there are concurrent findings by the two courts below, the interference in revision can only be called for when there is some misreading of evidence or perversity or illegality or unreasonableness in the approach of the two courts below.

12. Learned Advocate for the petitioner has also relied upon a decision of this Court in the case of Arvind Balashankar Joshi v. State of Gujarat, reported in 1990(2) GLR 1346. There this court has observed that if a court acquits an accused of the offence under section 468 of IPC, the accused cannot be convicted of the offence under section 471 of IPC unless there is other cogent and independent evidence. In para 14 of the said judgment it has been observed that when the accused is acquitted from offence under section 468 of the IPC, he cannot be convicted for the offence punishable under section 471 of the IPC, unless there is direct and independent evidence irrespective of circumstantial evidence. However, there is further observation that the circumstantial evidence relied upon by the trial court had no nexus with the facts of the case. Therefore, it

cannot be said that this court has decided the said matter as a matter of principle that in no case of acquittal under section 468 of IPC, a person can be convicted for offence under section 471 of IPC on circumstantial evidence. After all the said matter was decided as the matter of fact involved in that particular case and not by way of principle as said above. In the present case, it is found that the document Exh.10 is admittedly a forged one, since genuine document has already been produced at Exh.11. The materials on record show that the said document was used and produced by the petitioner. Therefore, there is evidence to show that the said document was used and produced by the petitioner and, therefore, the above decision will not help the present petitioner.

14. Another decision referred to by the learned Advocate for the petitioner is in the case of Mohd. Sharif v. State of Orissa, reported in 1995 SCC (Cri.) 1111. There it has been laid down that the High Court was not justified in refusing to look into the evidence on the ground that no such specific ground was raised in the memo of the revision petition. This is not the matter involved in the present case. In fact, this Court has not referred to consider any point of argument on the ground that a specific plea was not raised in the memo of the revision application. Even the learned Addl.Sessions Judge has not taken up the said stand during the course of the judgment. At the same time, the mark sheet exh. 10 was actually recovered from the record of the School authority. The petitioner had obtained job on the strength of the said mark sheet. He would not have been able to get job if he had not produced the said mark sheet Exh.10. He would not have been called for interview also, had he not produced the said mark sheet. He actually served the institute on the said position for quite a long time. Considering the surrounding circumstances. I find that there was sufficient material direct and circumstantial before the courts below to hold that the petitioner and the petitioner alone had used and produced the said document Exh.10 before the appointing authority with a view to get a secured job. Once it is found that it was the petitioner and the petitioner alone who has used the said document Exh.10 and when the said document Exh.10 was found to be false and when the genuine document Exh.11 was also on record, there was no alternative before the two courts below but to hold that the petitioner dishonestly produced the said forged mark sheet Exh.10 for securing job in the school employment. In that view of the matter, an offence under section 471 was clearly made out and the two courts below cannot be

said to have committed illegality in convicting the present petitioner for the said offence. In short, no illegality is shown to have been committed by the two courts below in convicting the petitioner for an offence punishable under section 471 of IPC. When no illegality has been shown, this court exercising revisional powers cannot lightly brush aside the findings and reasonings of the trial court. In short, there is no merit in the present revision and, therefore, it is required to be dismissed.

15. For the foregoing reasons, this revision application is ordered to be dismissed. Rule discharged. The petitioner who is at present on bail shall surrender within four weeks. In case he does not surrender, non-bailable warrant shall be issued against him. Intimation shall be issued to the surety with respect to this order so that the surety can take appropriate steps for due compliance of this order.

Date:6.2.2002 [D P Buch, J.]
msp